Hedison Manufacturing Company *and* Rhode Island Workers Union, Local 76, Service Employees International Union, AFL-CIO. Cases 1-CA-14085 and 1-CA-14086

March 26, 1981

SUPPLEMENTAL DECISION AND ORDER

On September 22, 1980, Administrative Law Judge Benjamin Schlesinger issued the attached Supplemental Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and the General Counsel filed an exception and a supporting brief, and a brief in support of the Administrative Law Judge's Supplemental Decision.

The Board has considered the record and the attached Supplemental Decision in light of the exceptions and briefs and has decided to affirm the rulings,[1] findings,[2] and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that Respondent, Hedison Manufacturing Company, Lincoln, Rhode Island, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

[1] General Counsel excepts to the failure of the Administrative Law Judge to grant General Counsel's motion to strike all of Respondent's evidence. To the extent that the General Counsel's exception in this regard constitutes a renewal of its motion to strike, that motion is hereby denied as lacking in sufficient merit.

[2] Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

At the outset of the instant hearing, Respondent objected to the proceeding and moved that the Administrative Law Judge disqualify himself because of a preconceived and irremediable bias against the Respondent. Respondent's motion was denied, and it excepts to that ruling. In this same regard, Respondent also contends that the Administrative Law Judge's findings, rulings, and interpretation of the evidence show bias and prejudice on his part against Respondent. We find Respondent's allegations of bias and prejudice to be totally without merit. Upon our full consideration of the record and the Administrative Law Judge's Supplemental Decision, we perceive no evidence that he prejudged the case or demonstrated any bias against Respondent in his analysis or discussion of the evidence.

SUPPLEMENTAL DECISION

STATEMENT OF THE CASE

BENJAMIN SCHLESINGER, Administrative Law Judge: On May 27, 1980, the National Labor Relations Board issued a Decision and Order (249 NLRB 791), severing Cases 1-CA-14085 and 1-CA-14086, and ordering that the proceedings be remanded to me and the record reopened for the purpose of permitting Respondent to present testimony and other evidence concerning the alleged unlawful discharges of, with one exception,[1] the entire central stores department— Supervisor Gary McKiernan and employees James Ferreira, Glen Hutloff, Thomas Lawton, and Russell Moison. The Board further directed me to prepare and issue this Supplemental Decision setting forth, where required, a resolution of the credibility of the witnesses who had thus far testified on behalf of the General Counsel and the Charging Party as to the matters encompassed within the scope of the remand as well as of any witnesses who testified in the supplemental proceedings ordered therein.

Pursuant to the remand, a hearing was held in Providence, Rhode Island, on July 14 and 15, 1980. All parties were afforded the opportunity to present all witnesses whom they desired, with the exception that Respondent's chairman of the board, Harry D. "Hike" Hedison, was not permitted to testify on behalf of the Respondent, pursuant to the Board's Decision affirming my earlier ruling.[2] The parties waived oral argument, and briefs were filed by both the General Counsel and the Respondent.

On the entire record in this case, including the testimony previously elicited by the parties and subject to the severance in the prior proceeding, and including my observation of the demeanor of the witnesses, and after due consideration of the briefs submitted, I make the following:

I. FINDINGS OF FACT

A. *Prior Proceedings*

I have carefully reviewed that portion of my original Decision 249 NLRB at 811-814, in which I found that Respondent's discharges of its central stores epartment employees and supervisor violated the Act. After review of the evidence submitted by Respondent and the rebuttal evidence submitted by the General Counsel, I am persuaded that the principal reason alleged by Respondent to support the discharges—that there was a slowdown in the central stores department—is unworthy of belief.

[1] The only employee not terminated was Joe DeMarse, who testified in the proceeding on behalf of the Respondent.

[2] Notwithstanding the Board's prior ruling in this proceeding, General Counsel moved at the opening of the hearing on remand for an order prohibiting Respondent from presenting its witnesses. I denied the motion on the ground that the Board's Decision constituted the law of the case and I was bound to comply with Board law. In his brief, the General Counsel moves to strike the testimony of witnesses called by Respondent, on the ground that the proof elicited shows that one of the bases for the Board's decision was an erroneous offer of proof made by Respondent's counsel. See particularly fn. 10, *infra*. I deny the motion, which is more properly made to the Board upon exceptions, if any to this Decision.

In my original Decision, based solely on the testimony of witnesses who appeared on behalf of the General Counsel, I found that, although there was a backlog of work in the central stores department, the two employees and one supervisor who remained employed in the department after the discriminatory layoff of Lawton and the transfer of Moison could not be expected to accomplish the same amount of work as had previously been performed by four employees and one supervisor. Further, I found that Respondent knew of the employees' activities in support of the Rhode Island Workers Union, Local 76, Service Employees International Union, AFL-CIO (herein called the Union), and fired them for that reason and in order to discourage the union activities of Respondent's other employees.

B. *Respondent's Defense*

Respondent's evidence of a slowdown, as allegedly relied on by Louis Marinelli, Respondent's manufacturing manager, and as initially verified by Supervisor Donald Fontaine, who worked in the department for 1-1/2 days on January 18 and 19, 1978,[3] does not withstand scrutiny. Among the facts that Fontaine[4] ascertained were: (1) Hutloff's unusually slow method of weighing pieces of jewelry; (2) excessive absenteeism from the department; (3) talking while at work; and (4) bringing soda and candy to the department after lunch. I deal with these *seriatim*, noting that a typical slowdown is a deliberate effort by employees to alter their work habits so as to impede the ultimate production of their employer's final product. The objections posited by Respondent's management are less akin to techniques of slowdown than they are mere disagreements with employees' work habits.

Nonetheless, the accusation against Hutloff that instead of counting jewelry findings by two's, pushing them off the work table into his hand,[5] he laid them out in rows of two to a pile, has some indicia of a method to stretch out work. However, Respondent's proof fails, because this was the way Hutloff was taught to count findings. Hutloff was still essentially an inexperienced employee, and no one had ever told Hutloff that it was incorrect to proceed in the way he was doing. There was no alteration of his work habits. Merely because Fontaine may have believed that that was not proper was contradicted by the testimony of McKiernan, who stated that he taught Hutloff to do exactly that, and the testimony of Hutloff, who credibly testified that he was merely following directions.[6]

Even though Fontaine saw Hutloff counting findings in the manner described, Fontaine, himself a supervisor, never mentioned to Hutloff that there was another and speedier way. Indeed, it appears that the method used by Hutloff, although taking seconds more time, proved to be a more accurate way of determining the count, in order to insure against errors which became prevalent immediately after the employees and supervisor were terminated.[7]

With respect to the other interposed objections, they require briefer treatment, not only because I do not credit them, but also because Marinelli did not seem to rely on them very much. Conversations had always been permitted in the department, and there was no proof that the conversations either were about nonrelated business matters or were conducted solely to impede the work flow. That employees were absent "several times," for about 10 or 15 minutes, does not constitute "excessive" absenteeism, in view of Fontaine's admission that central stores employees were frequently required to leave the department to make deliveries of items to other departments. There was no proof submitted that employees who left the department during January were engaged in anything but business-related functions. Finally, Fontaine's testimony regarding the bringing of soda and candy to the department was not only general, but failed to show that this was not a practice permitted in the past, that it delayed any work from being done, or that it was engaged in for the purpose of slowing down production.[8]

The above findings have been stated as if I fully believed Fontaine and that the reasons expressed by him were the true reasons for his alleged recommendation to Marinelli. In fact, I have grave difficulty in believing Fontaine, whose testimony not only lacked specificity but also contradicted in material respects testimony which he gave 2 years before at a hearing on the entitlement of the various employees to unemployment compensation benefits.[9] Further, I generally discredit Marinelli, based on his utter lack of candor when he denied outright any knowledge of a union campaign being conducted in January. If I believed him, that would make him, a higher-ranking supervisor, the only representative of Respondent who had no idea that there was a union campaign being conducted at Respondent's premises, despite the fact that there had been open solicitation of union support at the plant on a daily basis commencing on January 10 and despite the fact that Marinelli attended a meeting on January 19 called by Respondent of pri-

[3] All dates hereinafter refer to the year 1978.

[4] Fontaine, who supervised the central routing department, was asked by Raymond Dansereau, then vice president in charge of manufacturing, to work in the central stores department because of his suspicion that the employees were engaged in a slowdown.

[5] To facilitate the counting of the small components of, for example, earrings, Respondent used proportionate scales. At a ratio of 72:1, one piece in one pan would equal the weight of 72 in the other pan. Thus, two pieces would equal a gross.

[6] Hutloff did not always count in the manner described. Rather, the method complained of was utilized for the counting of particularly small or difficult-to-handle findings or large quantities of findings, where errors were more likely to occur or, in the event of an interruption of work, where the count could quickly be resumed.

[7] I specifically discredit DeMarse's assertion that the pieces laid out by Hutloff were neatly and precisely arranged, one on top of the other. Even Fontaine, whom I generally discredit, was unwilling to go so far.

[8] Not one of the employees' faults (indeed, only Hutloff's name was mentioned) was mentioned to the employees, except that, on the direction of Dansereau, Hutloff was, on January 17, moved from one scale to another, for excessive conversation. McKiernan was never told that his employees should not leave the department, nor bring candy and soda into it, nor should count findings in a particular manner.

[9] Fontaine, for example, clearly remembered at the hearing that Hutloff, in counting, was neatly stacking chevrons in piles. Two years before, he testified that he could not remember what Hutloff was counting. Fontaine was unable to explain how his memory had been so clearly refreshed.

marily Respondent's supervisors to exhort their opposition to the Union, threatening that Respondent would "crush" the Union.

Marinelli's testimony was also at odds with previously given testimony at the unemployment compensation benefits hearing by Hike Hedison and Robert Graham, two of Respondent's principal officers, both of whom stated that Hedison made the decision to terminate the employees involved herein after obtaining the advice of Respondent's counsel.[10] I find that the earlier sworn admissions of Hedison and Graham are much more reliable than Marinelli's present testimony.[11] Further, I find the prior testimony more probable in light of the following facts: The Board has already held that, when the union campaign became public on January 10 Respondent took immediate action to discourage the employees' activities. The massive layoff of 21 employees on January 13 was met by the immediate filing by the Union of unfair labor practice charges on January 16. Respondent knew full well of the deep involvement of at least Hutloff, Lawton, and Ferriera in its central stores department. Before reaching the final decision to discharge them, it seems only probable that Respondent would desire to consult its legal counsel for his advice, as both Hedison and Graham admitted in their prior testimony.

Another reason relied on by Marinelli to support the discharges was that, at some point on January 31, Fontaine went to central stores to obtain a finding which was missing from an order, so that the piece of jewelry could be produced. Contrary to Fontaine's oral testimony, I credit instead his testimony at the unemployment compensation benefits hearing to the effect that when he asked for the item, he did not identify it by number. I further credit Hutloff's testimony that when asked for the additional item, he had no idea what Fontaine was seeking. His response of "Let big Lou get it, he's the one who fired McKiernan," although perhaps snide and rash in the circumstances, was not such that it should have constituted in Respondent's mind an act of insubordination. Rather, I find that Hutloff merely did not know what piece it was that Fontaine was seeking;[12] that McKiernan was normally the person who filled in orders with missing parts; and that Marinelli (the "big Lou"), having fired McKiernan, was the person whom Fontaine should seek to obtain the missing part.

I would be remiss if I did not note that the employee about whom Fontaine allegedly complained to Marinelli was never even identified by Fontaine. Instead, Marinelli took it upon himself, so he testified, to terminate the whole department and not the one who was allegedly insubordinate or those whom he could pinpoint as being responsible for the alleged slowdown. This included Lawton, returned from layoff to the job for only 1 day (January 30), and Moison, transferred back to central stores only a few days before, and absent on January 30—facts which certainly detract from Respondent's argument that the employees were terminated for a slowdown, in which Lawton and Moison could not have participated, and for insubordination, which involved only Hutloff, at best.

Further, Marinelli's explanation of how he tried to help McKiernan overcome his complaints of shortage of manpower was utterly lacking in candor, especially his testimony that he transferred a casting employee, Wayne Scott, to the central stores department in order to help out, but McKiernan rejected him despite the fact that he had worked there before. All parties agree that Respondent never employed a "Wayne Scott," but Respondent attempts to explain Marinelli's testimony by arguing that the name of that individual was first raised (by leading question) by Respondent's counsel,[13] and Marinelli merely adopted that suggestion, when he actually meant "Scott Bryant." I would be more sympathetic to this claim if Marinelli had not also identified "Wayne Scott" as being a black, whereas from my own observation when Scott Bryant testified Bryant was clearly white.

I further discredit Marinelli because he stated that after he had been told of the "big Lou" incident on January 31, he talked with Hedison, who was surprised and angered by the fact that the employees were engaged in a slowdown. Why Hedison should have been surprised is unexplained, especially in light of McKiernan's testimony that Hedison accused McKiernan of permitting a slowdown the day before, January 30. Indeed, it appears that sometime before January 18, Dansereau suspected that there was a slowdown, and that prompted his request of Fontaine (according to Fontaine)[14] to work in central stores. Fontaine reported his findings to Marinelli on January 19. Hedison, in the presence of Marinelli, brought to DeMarse's attention Hutloff's method of weighing findings about January 24 and asked DeMarse whether he thought it was time consuming. DeMarse said yes. It was the same day that Hedison asked McKiernan what the problem was and specifically noted that McKiernan should get more help. Thus, if I am to believe Marinelli's testimony that Hedison was "surprised," I would have to disregard the testimony of many of Respondent's other witnesses or, as an alternative, find that all of them were misstating the truth. That alternative makes more sense, and I so hold, because of the mutual and internal inconsistencies and contradictions of their testimony.[15]

I have no doubt that there was some backlog in the work of the central stores department. Indeed, all parties concede that fact. According to Marinelli, the backlog began no later than about January 10, when the Union

[10] The latter two sworn statements are not only at odds with Marinelli's sworn testimony but also at odds with the offer of proof recited in the Board's *Hedison* decision (249 NLRB at 798, fn. 19) and Respondent's brief, which concedes: "It is unlikely that Marinelli would complete the discharges without consultation with his superiors including both Mr. Graham and Hike Hedison."

[11] The General Counsel also argues that Marinelli should not be believed because he did not testify at the unemployment hearing, "a fact which is understandable (only) if the discharge decisions were really made by Hedison and not by Marinelli." I agree.

[12] Fontaine admitted that there are so many variables in clips, one could not find the proper one without an identifying number.

[13] Certain errors in the transcript are hereby noted and corrected.

[14] McKiernan testified that Dansereau had stated that Hike Hedison had put Fontaine into the department.

[15] Specifically, I find improbable the fact that Fontaine discovered the slowdown in mid-January, yet Marinelli arranged for the transfer of Moison and recall of Lawton without other corrective action.

first began to openly solicit the support of Respondent's employees. Some of Respondent's witnesses testified that it started to increase from that time. Assuming that is accurate (some of the General Counsel's witnesses testified that there was a backlog even before then), it is not surprising that the backlog should grow or, at least, remain, because Lawton was discriminatorily laid off on January 13 and Moison was transferred on the day before, and McKiernan had only two employees working with him.[16]

The extent of the backlog was also a subject of some dispute, Respondent's witnesses generally describing it as much greater than that testified to by witnesses called by the General Counsel. Employee Larry King, called by Respondent, sided more with the General Counsel's witnesses, and I find it likely that the amount of work on the floor accorded with his recollections.[17] The amount, however, is not wholly to be the point. Rather, it was Marinelli's position that the backlog should have been cleared up more quickly than it was and the basis of his judgment that there was a slowdown (which at one point he characterized as "deliberate" and, at another point, testified that he did not know the cause of it) was a comparison with an earlier period when it was busier and the department had the same number of employees. No showing was made, however, that it was busier at any earlier time; and the evidence demonstrates that the department had been depleted because of Moison's and Lawton's absence.[18]

I thus find that the backlog was not caused by any slowdown on the part of the alleged discriminatees.[19] Although Marinelli appeared to be conciliatory in his testimony that he attempted to help McKiernan as much as possible to fill in with extra help so that the job could effectively be accomplished, his assistance was no more than a facade. The transfer of Moison and the rehiring of Lawton was effective only within several days of McKiernan's discharge. Indeed on the day that McKiernan was discharged, Moison was sick, and Lawton had just reported for work. Respondent can hardly contend that it exercised good faith in permitting McKiernan sufficient manpower to accomplish a full clean up of the backlogged work.

Respondent contends, however, that after the four employees were terminated, new employees were able to clean up the entire backlog within 3 or 4 days thereafter. No proof was submitted, however, to demonstrate that the new employees did any more work than the discharged employees; nor was there any proof submitted as to the quantity of work that either group did. For all that appears in the record, it may have been that there was less incoming work for the new employees to process, whereas the incoming work of the discharged employees far surpassed that which came into the central stores department in early February.[20]

In addition, employee LePere testified that other employees and supervisors contributed to the clearing away of the backlog. Further, as an employee in the central routing department, she obtained many of the orders filled by the central stores department and found numerous errors in the work that was being processed by central stores. How much time was lost by the inaccurate filling of orders was not shown, but it was not denied that there were such inaccuracies. I do not wish to involve myself with Respondent's choice of speed versus accuracy in the processing of orders, but it seems that Respondent was really not concerned with either. It was more devoted to the ridding of the shop of union adherents; and I conclude that, but for the union activities of the four employees, no terminations would have taken place.[21]

As a result, I reject the Respondent's defenses, discredit its witnesses, credit the witnesses called by General Counsel, and adhere to my original Decision.[22] I continue to specifically adhere to my conclusion that McKiernan was terminated in order to establish the predicate for the discharge of the employees who remained in the central stores department and that, otherwise, Respondent could not have relied on McKiernan's favorable testimony in the event that a charge of unfair labor practices were filed by the Union, as could have reasonably been expected and did ultimately occur.

If there had, in fact, been a slowdown, McKiernan would have been the logical target for permitting the slowdown to take place. In that case, had McKiernan not been terminated, there might be less justification for Respondent's actions. Indeed, it knew that McKiernan could not be relied on to follow, blindly, Respondent's instructions and might well be instrumental in giving tes-

[16] DeMarse testified that the backlog remained about the same, with slight variations, since the layoff of Lawton, meaning that the fewer number of employees was at least able to distribute, weigh, and shelve as much material as was coming in the department. Marinelli's complaint was that the situation did not improve.

[17] It appears that not all the work on the floor was unfinished and unsorted. At least many of the shelves of finished goods were filled, and there was nothing that could be done with other finished goods except to leave them on the floor.

[18] In addition, there was uncontradicted testimony, which I credit, that Bryant and Fontaine, while temporarily helping out in the department in January, mixed pieces of an order which caused the regular employees to pick out by hand the incorrect findings, thus causing further delay.

[19] This conclusion is bolstered by an adverse inference I have drawn from the failure of Harry D. Hedison to comply with a lawfully issued subpena and the failure of Respondent to call Graham and Dansereau to support the testimony adduced at the hearing.

[20] Respondent concedes as much in its brief, stating that the reduction of the backlog was "at best, equivocal. We recognize that the flow of incoming work, the nature of jobs to be filled, size of pieces, and many other variables may contribute to the speed with which the backlog could be cleared up." Respondent did not produce any records which might have supported its contentions.

[21] DeMarse, the only employee who was not fired, was the only employee in the department who did not support the Union, was invited to Respondent's antiunion meeting on January 19, and became the department's supervisor in mid or late March. Marinelli assumed, without investigation, that LeMarse was doing all he could to clean up the backlog. Marinelli made no similar assumptions about the work of any of the other employees.

[22] I found support for the conclusion that there was no slowdown from the fact that the discharged central stores employees voluntarily worked overtime in January. 249 NLRB at 812. At the hearing on remand, there was testimony that, at least on January 26, they did not work overtime. Upon my review of the entire record, and although this point was not raised in Respondent's briefs, filed either in the earlier hearing or in this one, I find that there is no record support for that finding. Accordingly, I specifically do not rely on it, but note that, in any event, there was no practice that employees were required to work overtime.

timony favorable to the central stores employees. On the other hand, by terminating McKiernan with the employees, Respondent had the chance of supporting all the discharges on the same theory and arguing that McKiernan, because of inadequate supervision, was permitting the slowdown to exist.

The General Counsel requests that I find, contrary to my original Decision, that McKiernan was terminated because he did not comply with Respondent's instructions to engage in unfair labor practices. I decline to do so. The fact that McKiernan may have voiced objections to the layoff of Lawton and encouraged Respondent's recall of him and retransfer of Moison is not the equivalent of a refusal to comply with Respondent's requests to engage in unfair labor practices.[23] The fact that he was of a view different from the overall plan to "crush" the Union, in that he made proposals which would have obstructed Respondent's illegal goals, does not support the complaint.

Of importance here is an incident testified to by Hutloff, omitted in my original Decision, but one which becomes more important in view of Fontaine's testimony that he was transferred to the central stores department to investigate whether there was a slowdown. Hutloff testified, undenied by Fontaine, to Fontaine's insertion of several figures in one of Hutloff's job entries to make it appear as if Hutloff had made a substantial error. Upon complaint of Hutloff, McKiernan intervened, thus putting another obstacle in Respondent's plan, which I imply was to set up and terminate Hutloff well before January 31.

However, it seems to me that there is nothing in the record which McKiernan was requested to do, and did not follow through. He was not asked to commit an unfair labor practice, which McKiernan knew to be an illegal act, and he did not refuse to do so. However, Respondent could clearly understand from the comments that he made, and the actions which he took, that McKiernan was his own man and that he would not serve as protection for Respondent's desire to rid the central stores department of union adherents.

In that sense, McKiernan's discharge was the necessary conduit to clear the way for the discharge of the four employees. Perhaps, as the General Counsel apparently concedes, my difference with his position is one of mere semantics, such as the situation where a supervisor, who has previously shown his opposition to illegal conduct, is discharged in order to further a pretextual discharge. *Fairview Nursing Home*, 202 NLRB 318, 324, enfd. 486 F.2d 1400 (5th Cir. 1973), rehearing *en banc* denied 491 F.2d 1272 (5th Cir. 1974), cert. denied 419 U.S. 827 (1974). In any event, the facts found herein do not fall strictly within the Board's 8(a)(1) violations for firing a supervisor because he would not engage in unfair labor practices. Rather, McKiernan's discharge is more akin to the facts of *Pioneer Drilling Co., Inc.*, 162 NLRB 918 (1967), enfd. in pertinent part 391 F.2d 961 (10th Cir. 1978),[24] on which I continue to rely.[25]

II. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent set forth in section I above, occurring in connection with the operations of Respondent, described in section I of my earlier Decision, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes, burdening and obstructing commerce and the free flow of commerce.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Rhode Island Workers Union, Local 76, Service Employees International Union, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.
3. By discharging Supervisor Gary McKiernan on January 30, 1978, as a cover for discharging employees for their union activities, Respondent has engaged in, and is engaging, in unfair labor practices affecting commerce within the meaning of Sections 8(a)(1) and 2(6) and (7) of the Act.
4. By discharging James Ferreira, Glen Hutloff, Thomas Lawton, and Russell Moison on January 31, 1978, and thereafter by refusing to reinstate them, for engaging in union activities and for joining and assisting the Union, Respondent has engaged in, and is engaging, in unfair labor practices affecting commerce within the meaning of Sections 8(a)(3) and (1) and 2(6) and (7) of the Act.

THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom, and to take appropriate affirmative action designed to effectuate the policies of the Act.

Having found that Respondent, on January 30, 1978, discharged Gary McKiernan and that Respondent, on January 31, 1978, discharged James Ferreira, Glen Hutloff, Thomas Lawton, and Russell Moison, I shall recom-

[23] The General Counsel has cited no case in support of his position. The closest factual situation I have found is in *Inter-City Advertising Company of Charlotte, N. C., Inc., et al.*, 89 NLRB 1103, 1106-1107 (1950), enfd. as modified 190 F.2d 420 (4th Cir. 1951). There, however, the Board panel (Member Reynolds dissenting) found that a demand had been made on a supervisor to engage in violations of the Act. Other cases presented no similar issue, because the question of whether there was a demand, which was present in each of them, was not at issue. *Vail Manufacturing Company*, 61 NLRB 181 (1945), enfd 158 F.2d 664 (7th Cir. 1947); *General Engineering Inc.*, 131 NLRB 648 (1961), enforcement denied in relevant part 311 F.2d 57 (9th Cir. 1962); *Jackson Tile Manufacturing Company*, 122 NLRB 764 (1958); *Miami Coca Cola Bottling Company doing business as Key West Coca Cola Bottling Company*, 140 NLRB 1359 (1963).

[24] The General Counsel correctly notes that my failure to agree upon one of the theories posited by him does not alter the proposed remedy.

[25] Since my original Decision was rendered, the Board has considered numerous complaints involving supervisory discharges. Despite Member Truesdale's footnote in the Board's Decision herein, 249 NLRB 791, 796, fn. 20, and his numerous dissenting opinions, *Pioneer* and the cases cited in my earlier Decision still represent Board law; and I do not understand Member Truesdale's stated position to call for a result different from the one I have reached herein. See, for example, *Downslope Industries, Inc., and Geenbrier Industries, Inc.*, 246 NLRB 948 (1979); *Nevis Industries, Inc., d/b/a Fresno Townehouse*, 246 NLRB 1053 (1979); *DRW Corporation d/b/a Brothers Three Cabinets*, 248 NLRB 828 (1980).

mend that Respondent be ordered to offer full and immediate reinstatement to each of them to their former positions or, if such positions are no longer available, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges and make each of them whole for any loss of earnings or any monetary loss that they may have suffered from the dates of the discharges as a result of Respondent's unlawful conduct, less interim earnings, if any. The amount of backpay shall be computed in the manner set forth in *F. W. Woolworth Company*, 90 NLRB 289 (1950), together with interest thereon as computed in the manner prescribed in *Florida Steel Corporation*, 231 NLRB 651 (1977).[26]

Because of the character of the unfair labor practices found herein, and earlier by the Board, the recommended Order provides that Respondent cease and desist from, in any other manner, interfering with, restraining, and coercing employees in the exercise of their rights guaranteed by Section 7 of the Act.

Upon the foregoing findings of fact, conclusions of law, and upon the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER[27]

The Respondent, Hedison Manufacturing Co., Lincoln, Rhode Island, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership of its employees in or support of the Union, or any other labor organization, by discharging any of its employees or discriminating in any manner in respect to their hire and tenure of employment or any term or condition of employment, in violation of Section 8(a)(3) of the Act.

(b) Discharging supervisors as a means of covering up the discharges of employees for their union activities.

(c) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Offer to Gary McKiernan, James Ferreira, Glen Hutloff, Thomas Lawton, and Russell Moison full and immediate reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges, and make each employee whole in the manner provided above in the section entitled "The Remedy" for any loss of pay he may have suffered from the date of his unlawful discharge, until the date of such offer of reinstatement.

(b) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this recommended Order.

(c) Post at Respondent's places of business at Lincoln, Rhode Island, and Providence, Rhode Island, copies of the attached notice marked "Appendix."[28] Copies of said notice, on forms provided by the Regional Director for Region 1, after being duly signed by Respondent's representatives, shall be posted by it immediately upon receipt thereof, and be maintained by Respondent for 60 consecutive days thereafter, in conspicuous places, including Respondent's bulletin boards and any other places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director for Region 1, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

[26] See, generally, *Isis Plumbing & Heating Co.*, 138 NLRB 716 (1962).

[27] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall he deemed waived for all purposes.

[28] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT discharge any of our supervisors or management personnel to cover up for our discrimination against you for engaging in union activities.

WE WILL NOT discourage our employees from being members of the Rhode Island Workers Union, Local 76, Service Employees International Union, AFL-CIO, or of any labor organization, by discharging them or by otherwise discriminating against them with respect to their hire, tenure, or terms and conditions of their employment by us.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of their right to self-organization, to form labor organizations, to join the above-named or any labor organization, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of mutual aid and protection as guaranteed in Section 7 of the Act, or to refrain from any and all such activities. Employees are free to join the Union without fear or reprisals for so doing.

WE WILL offer Supervisor Gary McKiernan and employees James Ferreira, Glen Hutloff, Thomas Lawton, and Russell Moison full reinstatement to

their former positions or, if those positions no longer exist, to substantially equivalent positions, without loss of seniority or other rights or privileges; and WE WILL make each of them whole for any backpay lost as a result of our discrimination against them, with interest.

HEDISON MANUFACTURING CO.